REMARKS

Reconsideration of this application is respectfully requested. Claims 1-33 are pending in the present application. Claims 1-3 and 14 stand rejected. Claims 4-13 and 15-33 have been withdrawn from consideration.

Claim Rejections - 35 U.S.C. §102 and §103

Claims 1 and 14 were rejected under 35 U.S.C. §102(e) as being anticipated by **Yano et al.** (USP 6,701,732). Claims 2 and 3 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Yano et al.** in view of **Boyce** (USP 6,490,750). For the reasons set forth in detail below, these rejections are respectfully traversed.

The patentability arguments set forth in the response filed October 19, 2004 are hereby incorporated by reference.

The Office Action repeats the prior art rejections set forth in the previous Office Action dated July 19, 2004. Pages 3 and 4, Items 9-12 of the present Office Action provide reasons why the patentability arguments submitted with the response filed October 19, 2004 were not considered persuasive. However, the reasons why the arguments presented in the October 19, 2004 Response were not considered persuasive do not substantively address the arguments set forth in the Response. Instead, the Office Action simply cites substantially the same sections of the **Yano et al.** reference cited in the previous Office Action and asserts that these sections "expressly" disclose the claimed subject matter, without any further explanation. The Examiner

cites an additional passage from **Yano et al.** (col. 12, lines 26-44), also without any additional explanation.

Therefore, to help expedite prosecution, Applicants respectfully request that the Examiner specifically address Applicants' arguments in the next Office Action.

Further, on page 4, Item 12 of the Office Action, the Examiner responds to the patentability arguments traversing the §103 rejections of claims 2 and 3 over **Yano et al.** in view of **Boyce**. Specifically, the Office Action asserts that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." However, the patentability arguments set forth in the October 19, 2004 response *did not argue the nonobviousness of the combination of references*.

Contrary to the Office Action's assertion, the patentability arguments regarding claims 2 and 3 asserted that various claim elements are not disclosed or suggested by either of the references. Clearly, if neither of the cited references discloses a particular claimed element, then the combination of references cannot disclose that element, and, therefore, the combination cannot result in the claimed invention. Please note, this is a completely different argument from arguing the non-obviousness of the combination of references. Therefore, the rejection of claims 2 and 3 is not appropriate for at least this reason.

Because the outstanding Office Action asserts that the embodiment of **Yano et al.** disclosed in col. 12, lines 26-44 and col. 13, lines 38-67 "expressly" teach the claimed invention, this embodiment will be discussed below and again distinguished from the claimed invention.

First, col. 12, lines 26-44 and col. 13, lines 38-67 of **Yano et al.** disclose compressing and encoding captured video data (data generator 1001-11) and transmitting the video data (data transmitter 1000-12) at a bit rate designated by a rate adjustor (1001-13). Nothing in col. 12, lines 26-44 and col. 13, lines 38-67 relates to transmitting packets to a network based on write timing of an encoder to a storage means. Instead, the encoded data from the data generator 1001-11 are passed to the data transmitter 1001-12 and transmitted at a rate based on network buffer data volume (i.e., the volume of unarrived data on the network). See col. 13, lines 19-21 and col. 14, lines 41-49.

In general, col. 12, lines 26-44 and col. 13, lines 38-67 relate to a fifth embodiment of the data communication apparatus disclosed by **Yano et al.** that is described beginning in col. 11, line 44 through col. 17, line 10. The fifth embodiment is directed to a system for controlling data transmission between a camera server as a video data source and a client for receiving the video data via a network. In these systems, data that has been output to the network may be present in a buffer in an intermediate node on the network and has not reached the receiving side. The amount of data in the intermediate buffer is difficult to detect by the transmitting and receiving terminals. Therefore, in accordance with the fifth embodiment cited against the claims, a reception condition on the receiving side is reported to the transmitting side to predict the volume of data that has not reached the receiving side (col. 11, lines 45 - col. 12, line 8). The volume of such "unarrived" data on the network is referred to as "network buffer data volume" (col. 13, lines 19-21).

As shown in Fig. 17, according to **Yano et al.**, the video frame transmission start (and transmission bit rate) are determined to shift the network buffer data volume so that the network buffer data volume matches a target value upon completion of transmission of data for one frame (see "End of Video Transmission" in Fig. 17), and data in the network buffer becomes zero at the beginning of transmission of data in a video frame ("Start of Transmission of New Frame" in Fig. 17, col. 14, lines 42-49).

Thus, based on Fig. 17, the **Yano et al.** system differs from the present invention in that **Yano et al.** is not concerned with controlling transmission timing based on when real-time encoded data is written to a storage means (frame buffer). As shown in Fig. 17, the video frame transmission start timing is clearly based on selecting a timing to control the network buffer data volume.

Moreover, **Yano et al.** controls a frame transmission timing to the network by controlling the video capture timing of a next frame (see col. 12, lines 32-35 and 48-54). Note that the video frame capture timing is determined based on a video frame transmission interval FT and a transmission start timing of a next frame FT2 (col. 14, lines 57-67; col. 15, lines 37-39; and col. 15, lines 14-18). More particularly, in accordance with the fifth embodiment of **Yano et al.**, the "*video capture timing* is adjusted to start transmission of the latest video data at a timing when the [network data] buffer that had saved the data becomes empty, thus starting transmission of the first packet of video data" (co.. 12, lines 12-15).

In contrast, the presently claimed invention does not control transmission based on the image capture timing. Unlike the claimed invention, **Yano et al.** do not disclose or suggest

controlling transmission timing of packets to a network based on write timing of an encoder to a storage means.

In summary, **Yano et al.** dynamically adjusts an encoding (or transmitting) bit rate of a data transmitter (1001-12) in order that a volume of the virtual buffer on the network satisfies certain conditions. In contrast, the present invention controls the timing of packet transmission under constant encoding bit rate according to the write timing of an encoder to a storage means.

The remarks and patentability arguments regarding the **Boyce** reference set forth in the previous response are incorporated herein by reference.

For the reasons set forth above, reconsideration and withdrawal of the rejections under §§ 102 and 103 are respectfully requested.

CONCLUSION

In view of the foregoing amendments and accompanying remarks, it is submitted that all pending claims are in condition allowance. A prompt and favorable reconsideration of the rejection and an indication of allowability of all pending claims are earnestly solicited.

If the Examiner believes that there are issues remaining to be resolved in this application, the Examiner is invited to contact the undersigned attorney at the telephone number indicated below to arrange for an interview to expedite and complete prosecution of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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